



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP34

Payment of Emergency Medication by VA

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations that govern reimbursement of emergency treatment provided by non-VA medical care providers. VA is clarifying its regulations insofar as it involves the reimbursement of medications prescribed or provided to the veteran during the episode of non-VA emergency treatment.

DATES: This regulation is effective [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 382-2508.

(This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is authorized under 38 U.S.C. 1725 to reimburse an eligible veteran (or the provider of the emergency treatment or another

person or entity who paid such expenses on the veteran's behalf) for the reasonable value of emergency treatment furnished to the Veteran at a non-VA medical facility. Under 38 U.S.C. 1728, VA is authorized to reimburse eligible veterans (or the provider of the emergency treatment or another person or entity who paid such expenses on the veteran's behalf) for the customary and usual charges of non-VA emergency treatment furnished to the veteran.

Current VA regulations implementing 38 U.S.C. 1725 and 1728 each state that covered emergency treatment includes "medication, including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged." See 38 CFR 17.120(b) and 17.1002. It is undisputed that medications directly provided to the veteran or administered to the veteran as part of the emergency treatment are covered. VA has determined that the language "provided directly to the patient" is vague inasmuch as it does not clearly indicate that it also extends to a short course of necessary medication provided to the veteran by way of a prescription that is written or called in to an outpatient or commercial pharmacy by the emergency non-VA provider with instructions to the veteran-patient to obtain and use the medication post-discharge, as directed.

On July 27, 2015, we proposed to amend §§ 17.120(b) and 17.1002 to address this issue. See 80 FR 44318. We proposed amending § 17.120(b) to clarify that VA reimburses the cost of a short course of medication prescribed for the veteran at the

time that the veteran was receiving emergency treatment, by stating that emergency treatment includes “a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged.” We proposed making a similar amendment to the introductory paragraph of § 17.1002. The proposed amendments in this rulemaking are consistent with current VA policy and help ensure our regulations are not interpreted more narrowly than VA intends.

We provided a 60-day comment period, which ended on September 25, 2015. We received 1 comment in support of the proposed rule. Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with no changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB) unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy,

a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 Through Fiscal Year to Date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on December 16, 2015, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: December 17, 2015

William F. Russo
Director,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

§ 17.120 [Amended]

2. Amend the first sentence of § 17.120(b) by adding “or prescribed for” immediately after “provided directly to”.

§ 17.1002 [Amended]

3. Amend the introductory text of § 17.1002 by adding “or prescribed for” immediately after “provided directly to”.

[FR Doc. 2015-32098 Filed: 12/21/2015 8:45 am; Publication Date: 12/22/2015]